intervenors pointed out, that assumption is wholly incompatible with forward-looking technology and with the statements of other incumbent LECs that they can achieve "fallout" (to manual processes) of less than *1-2%* with their existing facilities. The only solution Ms. Dismukes could offer in the limited time available to review the non-recurring cost studies, however, was to split the difference: "AT&T and MCI assumed a 2 percent fallout rate; BellSouth in its studies has assumed at 20 percent fallout rate, and I simply took the average of the two." Dismukes Tr. (Tab 273) at 3032. However, it does not appear that such an adjustment was reflected in Ms. Dismukes' proposed prices. At all events, the LPSC staff recognized the manifest arbitrariness of that adjustment and instead "used BellSouth's OSS fall out rates as default number because of time constraints." LPSC Open Session Transcript at 85.

29. Finally, the best example of the arbitrariness of the limited Dismukes adjustments comes in the context of nontraffic sensitive switching costs. Notwithstanding that both the Commission and its state commission counterparts nationwide generally have found that port charges in the $1-4 range are adequate to recover all nontraffic sensitive costs of all local switching -- fully equipped with all features and functionality (including vertical features) -- BellSouth proposed a 2-wire port charge of nearly $12 that included only limited vertical features. Ms. Dismukes conceded that it was "not necessarily clear precisely what those costs are that are entering into the [BellSouth vertical features] model," and properly questioned, for example, why, as BellSouth assumed, "additional land or costs would be required if all you are doing is providing

features from the switch." Dismukes Test. at 3111-12 (emphasis added). However, based on "analyses" that Ms. Dismukes herself had difficulty describing, Ms. Dismukes managed to reduce this patently outlandish vertical features charge by only 16%. Ms. Dismukes did not gloss over the limitations of her vertical features recommendation:

> "I did look at the vertical features cost study and I did spend time on it and I did make recommendations and made changes to it, but in the process of my review, there were certain questions that came to my mind that I felt could be resolved differently rather than just accepting what was in the BellSouth model on the vertical features if I had more time and if I had the opportunity to do discovery. So that's -- it was looked at, I did make changes to it and I did analyze it, but there was just certain things that I could not do because of time constraints. "

LPSC Open Session Transcript at 93-94.

30. In short, the LPSC's approval of rates based derived from BellSouth's flawed embedded cost studies, altered only by the limited Dismukes adjustments, cannot conceivably be characterized as a reasoned or adequate application of the checklist requirement that BellSouth's rates, as a whole, constitute the offering of interconnection and network elements at the forward-looking costs of efficiently providing those elements. Putting aside here modest annual charge factor adjustments, Ms. Dismukes did little more than reduce BellSouth's patently ridiculous loop charges through rough modifications to a few key inputs. See Dismukes Test. (Tab 273) at 2925 ("I focused on the loop study in this case. . . . I did not and could not go into each study that BellSouth did and validate or not validate each assumption that they used"). Even as adjusted,

the loop rate is well above the forward-looking cost based determinations of most state commissions. More fundamentally, however, recurring loop rates aside, the majority of the hundreds of recurring and nonrecurring charges BellSouth would assess -- and hence the rates as a whole -- remain largely unadjusted from their anticompetitive base and well above any notion of forward-looking costs.

II. A NUMBER OF THE INDIVIDUAL RATES APPROVED BY THE LPSC VASTLY EXCEED FORWARD-LOOKING COSTS.

31. For precisely the same reasons that the LPSC's rush to judgment prevented Ms. Dismukes from fully analyzing or even reviewing the approved BellSouth rates, it is not possible here to list all the ways in which BellSouth's embedded cost focus produced rates that bear no relation to forward-looking costs. Some of the more egregious examples are listed below.

A. Recurring Loop Rates.

32. Even the rate element upon which Ms. Dismukes focused her analysis and adjustments remains well above forward-looking costs. BellSouth proposed a recurring 2-wire analog voice-grade loop rate of $25.24/month (excluding the frivolous "residual recovery charge"). Ms. Dismukes accepted the BellSouth study as the proper basis for calculation, notwithstanding its embedded cost focus. Ms. Dismukes then proceeded to adjust a few of

BellSouth's more patently unsupportable input assumptions, including depreciation, fill factors, and shared and common costs. As noted above, those adjustments were supported by little analysis, and there is no basis for assuming (as the LPSC did) that the resulting loop rate of $19.35 is cost-based. In fact, it is not. To put Ms. Dismukes' loop rate in context, the Hatfield Model estimated the average loop rate at $15.31, Ellison Test. (Tab 270/8) at Exhibit WE-2, and the Commission's Louisiana loop proxy is $16.98. Local Competition Order at Appendix D.

33. The BellSouth studies upon which Ms. Dismukes relied included a number of clear errors she made no attempt to correct. For example, BellSouth's model reflects a sample of loops that included only residential and small business lines, and thus excluded business trunks, ESSX lines and other loop types which account for approximately 12.5% of BellSouth's lines in Louisiana. Heikes Test. (Tab 268/6) at 2. As expert witnesses testified, this significantly biased BellSouth's cost estimates upward (by almost $1.50/month), because the excluded business trunks and Centrex lines are, on average, shorter than other loops. Ellison Test. at 33. They also tend to be concentrated in the more densely populated areas of the state, and distance and density are the major cost drivers in loop costs. Id. at 47. BellSouth did not even attempt to rebut these criticisms of its loop cost study. Its statistical witness, Mr. Ellis E. Smith, a recently retired BellSouth employee, responded only that "the supposed 'omissions' were intentional, because [BellSouth] determined that the categories that

Dr. Heikes identifies were not relevant to the universe being measured." Smith Reb.Test. (Tab 266/8) at 6. Ms. Dismukes noted this error, Dismukes Test. (Tab 273) at 9, but did nothing to correct for it. In short, there is no basis in the record upon which to make a reasoned finding that the average forward-looking Louisiana loop is $19.35.

34. BellSouth's cost studies for local loops also failed to include forward looking technology and assumptions. Instead, the studies relied extensively on historical, embedded, and out of date technologies and assumptions. Indeed, these studies disregarded BellSouth's own operational directives, which are forward-looking and in use by BellSouth outside plant engineers today. As set forth in the testimony of AT&T witnesses James W. Wells Jr. (Tab 269/5) and Ernest M. Carter (Tab 271/4), BellSouth's cost model: (1) did not incorporate the least cost that BellSouth incurs to place new investment; (2) included excessive amounts of analog switches that cannot support integrated digital loop carrier; (3) oversized distribution cables; (4) relied completely upon Universal Digital Carrier in lieu of forward-looking Integrated Digital Loop Carrier; (5) included excessive bridge tap investment; and (6) utilized actual fill factors in lieu of forward-looking fill factors. The sum total of using these inappropriate assumptions and backward-looking technology was to increase the cost of a 2 wire local loop by almost $10.00. See Ellison Test. (Tab 270/8) at Exh. WE-1 (line A1.1, compare columns 3 and 4). Yet Ms. Dismukes failed to address most of these issues as well.

35. In addition, the LPSC-approved loop rates plainly do not satisfy the Commission's cost-based pricing standards because they are not deaveraged. In its Local Competition Order, the Commission found "that deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements," and concluded that "rates for interconnection and unbundled elements must be geographically deaveraged." Id. at ¶ 764 (emphasis added). In its Ameritech Michigan Order, the Commission confirmed that deaveraging is mandatory for Section 271 checklist compliance:

> Establishing prices based on TELRIC is a necessary but not sufficient condition for checklist compliance. In order for us to conclude that sections 271(c)(2)(B)(i) and (ii) are met, rates based on TELRIC principles for interconnection and unbundled network elements must also be geographically deaveraged to account for the different costs of building and maintaining networks in different geographic areas of varying population density.

Id. at ¶ 292 (emphasis added). For that reason, the ALJ rejected BellSouth's average loop rate proposal and would have had the LPSC "find that the implementation of geographic de-averaging is necessary for the determination of accurate costs" and institute further proceeding to determine deaveraged rates. Final Recommendation (Tab 284) at 26 (emphasis added).

36. BellSouth's witness Varner quoted the Commission's Ameritech Michigan Order holding, see Varner Aff. at ¶ 21, but nonetheless took the position that:

> BellSouth does not offer deaveraged rates for unbundled network elements. The Act does not require that rates for unbundled elements be deaveraged; therefore the LPSC has the authority to determine whether geographic rates should be set as well as the timing of the implementation of such rates. Geographical deaveraging has not been ordered by the LPSC; therefore, geographic deaveraging is not required of BellSouth in Louisiana.

Mr. Varner's statement is significant for at least two reasons.

37. First, Mr. Varner did not attempt to defend BellSouth's failure to deaverage on any factual ground -- e.g., that there are no significant geographic cost variations within Louisiana. Varner Aff. at ¶ 22. Nor was any attempt made by BellSouth to make such a showing in the permanent pricing proceeding before the LPSC, and, in view of the state's (and, indeed, the region's) demographics, no such showing could be made. As testimony submitted in the LPSC proceeding on behalf of AT&T and MCI demonstrated, the Hatfield Model, which does produce deaveraged loop costs, showed deaveraged loop costs for Louisiana ranging from $10.12 for wire centers that serve in excess of 40,000 lines to $43.72 for wire centers that serve fewer than 2,000 lines. See Ellison Test. (Tab 270/8) at Exhibit WE-2.

38. Rather, Mr. Varner effectively acknowledged that there are significant cost differences in providing loops within Louisiana by arguing that "unbundled loop rates should

not be deaveraged until such time as the state commission can fully evaluate all the implications of . . . establishing a universal service fund and rebalancing end user local service rates." Varner Aff. at ¶ 22. Moreover, Mr. Varner testified before the LPSC that "[t]here is nothing in the Ameritech Order that is binding on [the LPSC]," that this Commission's "opinions concerning the appropriateness of Ameritech's application . . . should not be construed as rules," and that the LPSC "is not required to follow any of those opinions." Varner Reb. Test. (Tab 265/2) at 27:

> Indeed, [the LPSC] was at the forefront in challenging the FCC to preserve the rights of state commissions to act in the best interests of consumers. The Eighth Circuit gave state Commissions that right. Intervenors would now have you forfeit that ability to the FCC. The Ameritech Order is an attempt by the FCC to reimpose the same rules and requirements on the states that the Eighth Circuit very recently told the FCC that it did not have the authority to impose.[2]

Hence, BellSouth's refusal to deaverage loop rates geographically is based solely on its disagreement, on policy grounds, with this Commission's mandate that loop rates must be geographically deaveraged as a precondition to interLATA entry.

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[2] In contrast, the ALJ, whose Final Recommendation the LPSC completely disregarded, would have had the LPSC conclude that although it is "not bound by the findings of the FCC with regard to costing methodology, . . . consistent with our promulgation of Local Rules which provide for the establishment of rates for interconnection and unbundling derived from LRIC and TSLRIC costing standards, we concur with the FCC's conclusion that a methodology utilizing forward-looking costs best simulates the conditions of a competitive market . . . ." Final Recommendation (Tab 284) at 16 (emphasis added).

39. Second, although Mr. Varner attempts to place the LPSC between BellSouth and this Commission -- as though the LPSC had decreed that there is to be no geographic deaveraging at this time and as though the Commission owed some deference to such a decree -- geographic deaveraging was not even addressed by the LPSC in its Pricing Order, nor did the LPSC require BellSouth to charge averaged loop prices or prohibit it from charging deaveraged prices. Hence, BellSouth would have the Commission accept for purposes of Section 271 average loop prices that are not and cannot be cost based -- as the ALJ would have had the LPSC find -- in deference to BellSouth's policy objectives that the LPSC did not even speak to, much less adopt, in its Pricing Order, and that are manifestly inconsistent with this Commission's policy objectives for purposes of implementing Section 271.

B. Recurring Switching Rates.

40. The traditional recurring switching rates approved by the LPSC -- a recurring port charge of $2.20 and a recurring end office minute of use charge of $0.0023 -- are within the range of figures that many state commissions have approved as reasonable estimates of the forward-looking costs of all switching facilities -- including processors equipped to provide complete "vertical feature" functionality. Incredibly, however, the LPSC authorized BellSouth to inflate its port charges by nearly *400 percent* to cover supposed (and largely unspecified) incremental costs of a limited set of features -- producing an effective port charge many times higher than the rates that other commissions have determined are cost-based.

41. These "vertical features" charges are so far removed from any conceivable notion of cost-based pricing that it is difficult to know where to begin in analyzing them. Perhaps the best place to begin, however, is the unusual genesis of the separate vertical features charges, namely, the LPSC's decision issued September 5, 1997 that the Eighth Circuit's Iowa Utils. Bd. decision mandates that vertical features be treated as separate network elements and therefore that separate costs be assigned to them. LPSC Order No. U-22252-A (Tab 136) at 5. This conclusion is incorrect. The Eighth Circuit did not hold that each vertical feature or all vertical features are separate and discrete elements; rather, it held that CLECs are entitled under the Act to obtain all features and functions of the switch as part of unbundled local switching as opposed to being able to obtain them only through resale of existing vertical features. See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 808-809 (8th Cir. 1997). Nonetheless, six days following the LPSC's decision, BellSouth submitted supplemental direct testimony of Ms. Daonne Caldwell introducing new cost studies for vertical features of the switch, without, however, proposing a price or prices for such features. Caldwell Supp. Test. (Tab 265/5).

42. In rebuttal testimony filed on September 5, 1997, BellSouth witness Mr. Varner testified that "[t]o determine the rate for switching including . . . vertical features, it is necessary to add up the costs of all the vertical features and add them to the port cost. This would yield a 2-wire analog port cost of $11.97." Varner Reb. Test. (Tab 265/2) at 41. Mr.

Varner made it clear that this charge would apply in addition to BellSouth's proposed port charge without features of $2.61. Id.[3]

43. BellSouth's vertical features rate proposal is clearly not cost-based. According to the testimony of AT&T's witness, Catherine E. Petzinger, a former Bellcore employee who was involved for a number of years in the development and use of the Switching Cost Information System ("SCIS") on which BellSouth purported to base its vertical features cost study, the primary driver of vertical features costs is the cost of the switch processor. Petzinger Test. (Tab 271/8) at 24. That processor "should not be considered a traffic sensitive component if it is never expected to exhaust," but is "simply a fixed investment required to make the switch operational over its life." Id. at 23. Moreover, Ms. Petzinger testified that BellSouth's own studies confirm that BellSouth's switch processors are only 55-60% utilized even at the point they are retired. Id. Ms. Petzinger also testified that BellSouth does not incur any additional switching investment cost under its current contracts to provide additional features to customers. Petzinger Tr. (Tab 271) at 2557. Thus, Ms. Petzinger concluded that vertical features should not be assigned separate costs above and beyond the costs of the port --

[3] Three days later, at the first day of hearings on September 8, 1997, Mr. Varner also offered CLECs the option of purchasing "a port with any three features that they choose to have for $8.25, and buy the remainder at cost prices off the price list." Varner Tr. (Tab 265) at 36.

which already include the costs of the processor. Id. at 2527.[4] Accordingly, acceptance of BellSouth's vertical feature prices as cost-based would require acceptance of the notion that the incremental cost of using a component of a network element -- i.e., the processor -- somehow exceeds the cost of the element itself. Although there is no evidence that the LPSC ever focused on the vertical features charges proposed by BellSouth, its Pricing Order accepts precisely that baseless and illogical notion without explanation.

44. The problems with BellSouth's vertical features studies were not lost on Ms. Dismukes. In her prepared testimony filed on September 22, 1997 she testified that her review of BellSouth's vertical features cost study indicated that "the [LPSC] cannot rely on outputs of the study, due to inherent flaws in the inputs." Dismukes Test. (Tab 273) at 46. Ms. Dismukes further testified that,

> [g]iven the time constraints of this proceeding, I have only made a limited review of this study. BellSouth's study is poorly documented and offers little explanation of how the costs of vertical features were developed.

[4] The only testimony even attempting to rebut this critical point was the rebuttal testimony of Mr. David Garfield, a current Bellcore employee, who asserted that even modern switch processors will exhaust if not upgraded over time. Garfield Reb. Test. (Tab 267/2) at 2. This obviously disregards the fact that processors are typically retired before that point is reached as Ms. Petzinger explained.

Id. Lacking any ready means (or time) to conduct her own study or modify the BellSouth study, however, Ms. Dismukes did nothing more than reduce the proposed charge by a fixed percentage -- ultimately approximately 16% -- to reflect forward-looking demand. Apart from this adjustment, Ms. Dismukes made it plain that she "[e]ssentially . . . accept[ed] BellSouth's numbers." Dismukes Tr. (Tab 273) at 3115-3116.

45. At the conclusion of her testimony at the hearings, Ms. Dismukes again acknowledged that she was acutely uncomfortable with her analysis and its results. When asked whether if she would look at any "additional factors" if she had additional time to address the issue of vertical features pricing, Ms. Dismukes responded as follows:

> [T]he first thing I would have to do is send out additional discovery. Like I said, there are many parts of the study that are complex and not well documented. It's not necessarily clear precisely what those costs are that are entering in to the model. . . .
>
> [T]here were several aspects of the study that I would . . . like to look at more thoroughly; do some discovery on; and I also think it would be interesting to actually take the costs of BellSouth associated with the features and rather than run it through the set of more paper that it has used to develop these costs and output, if you can't take those costs and actually run them through their switching cost model as a fixed cost, and then see what the cost of the port would be in that situation.

Dismukes Tr. (Tab 273) at 3111-3113. Moreover, Ms. Dismukes conceded that, the result of such additional analyses "may be a radically different number, but I don't know." Id. at 3113 (emphasis added).[5]

46. It is little wonder that the ALJ, who heard the testimony summarized above, would have had the LPSC conclude that "the costing questions raised regarding vertical features make necessary an independent analysis of BellSouth's underlying cost data." Final Recommendation (Tab 284) at 52. The ALJ would also have had the LPSC "recognize that the timing of the Commission's Order 22252-A, which necessitated for the first time that a costing analysis be conducted with regard to vertical features, and the commencement of the hearing in this proceeding allowed very little opportunity for the Commission Staff witness to analyze the underlying cost data," and "decline to establish a permanent rate for vertical features at this time, and instead direct that further proceedings be undertaken with regard to the pricing of vertical features, allowing Ms. Dismukes, as well as all other parties, to conduct

[5] In addition, although Ms. Dismukes had stated in her direct testimony that she did not agree with Ms. Petzinger's position that there "is essentially no cost to BellSouth of offering vertical features," and that "there is a cost for each of the vertical features," Dismukes Tr. at 3065-66, Ms. Dismukes acknowledged by the end of her cross-examination that the costs of "right-to-use" fees, for example, that are embedded in BellSouth's cost model, "are not incremental costs in the sense [that] BellSouth does not incur those fees each time an additional feature is ordered." Id. at 3117 (emphasis added) ("So from the standpoint there are no incremental costs, once the hardware, once the software, is purchased by BellSouth, there is, there should be very little incremental cost associated with those vertical features").

discovery concerning BellSouth's underlying cost data." Final Recommendation (Tab 284) at 52 (emphasis added). Nonetheless, the LPSC adopted Ms. Dismukes' proposal on a permanent basis even after Ms. Dismukes confirmed to the Commission itself that she had no real chance to verify BellSouth's studies.[6] See LPSC Open Session Transcript at 93 ("Commissioner Field: "am I incorrect that you didn't have a chance to verify those, the underlying data? Ms. Kimberly Dismukes: "You're correct.").

47. As a result of the limited time available to Ms. Dismukes to review BellSouth's cost studies for local switching, she was also unable to make appropriate adjustments to BellSouth's switching cost studies to reflect least-cost switch purchasing. Hence, her proposed port charge, which should have included charges for all vertical features of the switch, was itself inflated. In contrast, as AT&T witness Petzinger testified, AT&T did review BellSouth's contracts with its switch vendors. In other words, BellSouth presently pays far less for its switches than the "costs" claimed in its study. Based on this review, AT&T proposed significant adjustments to BellSouth's switch investments prices, to reflect the forward-looking least cost BellSouth would incur in replacing or adding any additional switches. Petzinger

[6] The vertical feature charge set forth in the LPSC Pricing Order is not the $8.51 charge proposed by Ms. Dismukes, but a charge of $8.28 reflecting Ms. Dismukes's proposal of 23 cents per feature but assuming 36 rather than 37 separate vertical features. Moreover, the Pricing Order is silent as to whether this charge is to cover the availability of all features and functionalities in the switch or only those currently offered by BellSouth.

Test. (Tab 271/8) at 8-21. Because Ms. Dismukes had not reviewed BellSouth's switch contracts, she was in no position independently to evaluate the merits of such adjustments and, accordingly, proposed none. As a result, because the LPSC relied solely upon the recommendations of Ms. Dismukes, it could not have adjusted BellSouth's cost studies for any inflated switch investments.

C. Collocation Rates.

48. As BellSouth's witnesses Ms. Caldwell and Mr. Varner testified during the hearings before the LPSC, BellSouth will physically separate the loop and switch when ordered by a CLEC, and leave it to the CLEC to reconnect them in collocated space in each BellSouth office. Caldwell Tr. (Tab 265) at 625-630; Varner Tr. (Tab 265) at 51. As set forth in the affidavit of Mr. Robert V. Falcone and Mr. Michael E. Lesher, AT&T believes that this approach is anticompetitive and unlawful. Nonetheless, BellSouth's insistence that CLECs use collocated space to recombine network elements underscores the importance under the checklist of forward-looking collocation rates.

49. Moreover, BellSouth's proposed charges for physical collocation -- which were adopted by the LPSC without adjustment (except for depreciation, cost of capital and shared and common costs) and without review by the LPSC's cost consultant -- are not based on forward-looking economic costs and are grossly inflated. AT&T and MCI sponsored the

testimony of several witnesses to describe a collocation cost model based on forward-looking cost principles. That model assumes that collocated space will be enclosed in metal cages served by fiber and copper cable, and estimated investments required for the construction and maintenance of these facilities based on competitive price quotes. See Bissell Test. (Tab 272/12) at 13-15; Klick Test. (Tab 272/14). BellSouth, in contrast, did not base its collocation prices on any forward-looking cost assumptions (or even submit evidence to support those prices). Indeed, BellSouth's witness Varner essentially ridiculed the idea of doing so. Varner Reb. Test. (Tab 265/2) at 29-30.

50. Instead, BellSouth's collocation prices are based on estimated costs for constructing facilities in BellSouth offices as they exist today and of a far more elaborate and expensive kind than that proposed, or even desired, by AT&T. Rather than being enclosed by cages, BellSouth would provide collocated space in rooms constructed with metal studs and finished drywall. This approach, in itself unnecessary and expensive, generates a whole host of additional costs that would not be incurred with metal cage enclosures, such as the need for separate air conditioning and lighting. Moreover, the construction of such facilities might entail the removal or relocation of equipment and personnel, and the protection of BellSouth equipment and personnel from the dust and other incidents of the construction, with the result that costs would be driven higher still. Crocket Test. (Tab 272/8) at 5-18. Further, a number of BellSouth's proposed collocation charges are unreasonable on their face -- for example, the

charge for merely submitting an application of almost $5,000, a security escort charge ranging from $32.35 to $48.66 per half-hour, and nonrecurring charges for cross-connects of $23.04 for a 2-wire loop. Finally, key collocation rates such as the initial cost of site preparation -- often the largest one-time cost associated with collocation -- are wholly unspecified. Rather, the LPSC approved BellSouth's proposal that such charges should be "ICB" -- i.e., individual case basis -- with no guidelines whatever. Thus, a new entrant would have to wait for the reply of BellSouth to its request for collocation in a specific central office -- and the charges BellSouth would propose for space preparation -- before it could determine whether it would be economic to proceed.

51. In sum, a new entrant wishing to migrate an existing BellSouth customer to the new entrant's service, if forced to use collocated space in order to serve the customer, would incur nonrecurring costs of 3-4 times what it would also incur simply to order and receive the network elements to serve the customer. Additional nonrecurring costs would also be incurred to insure that the customer was not out of service, or, at least, not at a time that the customer would be inconvenienced. The end result of these inflated collocation charges is that no new entrant would be able to compete with BellSouth, given the high costs it would incur before it could even provide dial tone to a customer.

52. Ms. Dismukes acknowledged that she had not reviewed BellSouth's collocation assumptions, much less the AT&T/MCI collocation model. Dismukes Tr. (Tab 273) at 3119. In her Final Recommendation, the ALJ concluded that TELRIC principles are "applicable to the pricing of collocation," and found "that the AT&T/MCI collocation model best reflects TELRIC costs." Final Recommendation (Tab 284) at 55. The ALJ also recommended that the LPSC "approve of the wire-cage collocation enclosure proposed by the intervenors as a secure, cost-efficient structure." Id. Nonetheless, the LPSC, again purportedly relying solely on Ms. Dismukes' recommendations -- on an issue she did not even seriously or specifically address -- adopted collocation prices that are not least-cost or forward-looking.

D. Nonrecurring Rates.

53. BellSouth's nonrecurring charges for service ordering, installation, disconnection and testing are based on assumptions that do not reflect forward-looking, least-cost systems or work activities. In addition, BellSouth assumes that CLEC orders sent over BellSouth's electronic ordering systems will fail 20% of the time and thus require costly manual intervention by BellSouth. There is no possible basis for any such assumptions in a forward-looking costing environment.

54. As a threshold matter, BellSouth's nonrecurring cost studies are based on time estimates and other information gathered in the early 1990's. Hyde Test. (Tab 272/7) at 10.

Clearly, assumptions based on such historic information, which does not reflect current much less forward-looking technology or the increasing efficiency of Operational Support Systems ("OSS"), cannot reflect a forward-looking and least-cost study. Methodological flaws in BellSouth's nonrecurring cost studies also grossly inflate costs and resulting charges once an order for installation or disconnection is assumed to be placed into the BellSouth provisioning process. BellSouth applies work group activities on a per loop basis -- e.g., the Local Customer Service Center -- when their function is on a per order basis. Id. at 21. Similarly, For example, BellSouth applies work group activities 100% of the time -- e.g., use of the Work Management Center -- without regard to the associated levels of activity. For example, on the 2-wire non-designed loop, BellSouth's nonrecurring cost study assumes there will be a technician dispatched on only 20% of the orders; however, the Work Management Center will coordinate a "dispatched" technician on 100% of the orders. Id. at 21-22; Walsh Tr. (Tab 272) at 2715. In addition, in engineering its network, BellSouth includes unnecessary additional conditioning and multiplexing equipment such as D4 Channel Banks in its recurring loop cost studies. This additional investment, in turn, triggers costly engineering work group activities such as the Circuit Provisioning Group and unnecessary OSS. Hyde Test. (Tab 272/7) at 12.

55. As to the likely rate of failure of BellSouth's electronic ordering system, other incumbent LECs, including Southwestern Bell, claim to currently achieve fallout rates of less

than 2% with their existing equipment. Walsh Test. (Tab 272/1) at 12. Modern, efficient equipment can achieve much lower fallout rates, as the ALJ recognized in recommending that the LPSC hold BellSouth to a 1% standard within 18 months. Final Recommendation (Tab 284) at 45. Because manual processes are much more costly -- and in many cases the only relevant costs associated with service order provisioning and other nonrecurring activities -- the effect of BellSouth's proposal was to increase its nonrecurring charges an order of magnitude above forward-looking rates.

56. Indeed, any claim of a forward-looking fallout rate in excess of a few percent at most would be tantamount to a confession of gross inefficiency -- or lack of BellSouth cooperation -- that a competitive market simply would not tolerate. And, in fact, BellSouth has declined to make any such confession. A BellSouth witness acknowledged in the Louisiana hearings that fallout within its existing electronic systems is rare. Landry Test (Tab 267) at 1047.

57. Finally, BellSouth contends that system upgrades capable of all but eliminating any fallout due to CLEC error were scheduled for completion in September of this year and, thus, should already be in place. Such upgrades, if available and if they work as BellSouth claims, should permit BellSouth systems to edit CLEC service request and return problem orders to

CLEC personnel electronically for correction before any fallout can occur. Hyde Test. (Tab 272/7) at 16.

58. For all of these reasons, the BellSouth nonrecurring charges approved by the LPSC are grossly excessive -- for instance, the $40.69 nonrecurring charge for a two-wire analog voice grade loop. BellSouth's assumptions in costing out nonrecurring work activity for this element did not account for (1) the efficiencies of deployed intelligent network elements such as Integrated Digital Loop Carrier and Digital Crossconnect Systems; (2) the efficiencies, and resultant low fallout, of Operational Support Systems; (3) the percentage of loops served by fiber; (4) dedication of inside and outside plant; (5) the percentage of loops served at staffed/non-staffed central offices; and (6) the number of orders worked per dispatched technician. These factors were either simply ignored or inflated in BellSouth's nonrecurring cost studies. Hyde Test. (Tab 272/7) at 10-18.

E. Directory Assistance Database Service.

59. As AT&T's witness Mr. Wayne Ellison explained, BellSouth's proposed charge for directory assistance database service ("DADAS") was derived by dividing the periodic cost of providing the magnetic tapes which contain the directory assistance data by average listings that a hypothetical purchaser would provide its own customers. Mr. Ellison identified three flaws in this approach:

> First, BellSouth's proposal is to charge AT&T a "per message" usage charge to recover costs that are not sensitive to use. BellSouth's primary costs consist of relatively minor magnetic tape preparation and shipping charges, which vary based on whether a tape is mailed every day, once a week, or once a month. To make matters worse, BellSouth proposes not to charge for the listings provided AT&T, but in proportion to AT&T's use of the list, which has no bearing on BellSouth's cost. Third, the actual usage charge used by BellSouth to derive a "per message of use" cost appears to be the typical usage for an existing customer, not new entrants likely to have high volumes, and thus low "per message" charges.

Ellison Test. (Tab 270/8) at 39. Mr. Ellison therefore concluded that BellSouth's proposal would violate the Act and sound pricing principles because they would not recover costs "in the manner in which they are incurred." Id.

60. Ms. Dismukes did not address this issue in her prepared testimony, notwithstanding that results of the BellSouth approach to recovering DADAS costs criticized by Mr. Ellison were reflected in the pricing exhibit attached to her testimony. Moreover, on cross-examination, Ms. Dismukes, although she acknowledged that this issue had been addressed by Mr. Ellison, expressed doubt that she could address this issue because she had not "had an opportunity to go through that study in detail." Dismukes Tr. (Tab 273) at 2924. Nonetheless, Ms. Dismukes acknowledged in response to a hypothetical question that Mr. Ellison's criticism of BellSouth's approach was valid.

> Q: [A]ssume with me that what BellSouth does is deliver a directory assistance tape and that it incurs a one-time charge each time it produces that tape for the purposes of these next few questions. Would you do that?
>
> A: Yes.
>
> Q: If that's true, do you believe that it would be appropriate as a matter of methodology to charge for directory assistance on a per call attempt basis?
>
> A: No.
>
> Q: Then, given additional time then you would change your testimony on that issue? Assuming that the facts of my hypothetical are correct, of course?
>
> A: Yes. Assuming the facts of your hypothetical are correct, I would consider changing that . . . .

Id. at 2924-2925. Hence, by adopting BellSouth's DADAS rate, Ms. Dismukes unknowingly proposed a rate that she readily acknowledged was based on an untenable approach to cost recovery.

F. Number Portability.

61. Cost recovery for number portability is governed by section 251(b)(2) of the Act, which provides as follows:

> The cost of establishing telecommunications numbering administration and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

Pursuant to its authority under this section of the Act, which the Eighth Circuit affirmed, the Commission in its First Report and Order and Further Notice of Proposed Rule making released July 2, 1996, in CL Docket No. 95-116 stated unequivocally that:

> requiring the new entrants to bear all of the costs, measured on the basis of incremental costs of currently available number portability methods, would not comply with the statutory requirements of section 251(e)(2). Imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability.

Id. at ¶ 138 (emphasis added). Yet that is precisely what the LPSC has approved. BellSouth's cost studies reflect costs for remote call forwarding and direct inward dialing that BellSouth proposes to collect solely from new entrants.

62. Ms. Dismukes acknowledged on cross-examination that, because of the press of time, she "did not critique the BellSouth model with respect to the FCC interim number portability decision and its compliance therewith," and could not testify whether she believed "that study [was] complaint with the FCC's interview number decision or not." Dismukes Tr. (Tab 273) at 2943-2944.

63. Hence, with respect to prices for interim number portability, as for other network elements as discussed above, the LPSC adopted the prices set forth in Ms. Dismukes' exhibits notwithstanding that those prices clearly violate the Commission's rules and notwithstanding